

Appeal No. 11-16358

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

RIGHTHAVEN LLC,

Appellant,

v.

CENTER FOR INTERCULTURAL ORGANIZING, and KAYSE JAMA,

Appellees.

Appeal from the United States District Court for the District of Nevada
Case No. 2:10-cv-01322-JCM-LRL
The Honorable Judge James C. Mahan

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE*
GOOGLE INC. IN SUPPORT OF APPELLEES CENTER FOR
INTERCULTURAL ORGANIZING AND KAYSE JAMA**

Of Counsel:

Fred von Lohmann
Oliver Metzger
GOOGLE INC.
1600 Amphitheatre Parkway
Mountain View, CA 94043
650.253.0000

Andrew P. Bridges (CSB No. 122761)
Laurence F. Pulgram (CSB No. 115163)
Jennifer L. Kelly (CSB No. 193416)
FENWICK & WEST LLP
555 California Street, 12th Floor
San Francisco, CA 94104
415.875.2300

Attorneys for Amicus Curiae Google Inc.

Pursuant to Federal Rule of Appellate Procedure 29(b), Google Inc. (“Google”) respectfully requests leave to file its concurrently submitted *Amicus Curiae* brief in the above-entitled case in support of Defendants-Appellees Center for Intercultural Organizing and Kayse Jama.

Google believes that its *amicus* brief will assist the Court in its analysis of the fair use-related issues presented by this appeal. While Google takes no position on the ultimate merits of this case, it has a vital interest in the careful and considered application of the fair use doctrine. As a diversified technology company, operating one of the world’s largest and most popular internet search engines, Google’s operations depend heavily upon the protections provided by the fair use doctrine. Its mission – to organize the world’s information and make it universally accessible and useful – is likewise dependent. Google is, accordingly, intimately familiar with the historical application of the doctrine by the Court, as well as the impact that the doctrine has upon the information technology industry, and thus, is well situated to offer some considerations pertaining to the important fair use issue presented in this appeal.

In its concurrently filed *amicus* brief, Google supports Defendants-Appellees in their arguments against Righthaven’s misguided construction of the fair use doctrine. Consistent with well-settled precedent, the proper application of the fair use doctrine requires a flexible, case-by-case approach in which courts weigh and

balance numerous factors, and, contrary to Righthaven's assertions, no single statutory factor is outcome-determinative, nor ever has been.

Google urges the Court, in its brief, to reject Righthaven's false assertion that there is "almost a *per se* pronouncement" in the Ninth Circuit precluding the application of the fair use doctrine when an entire work has been copied. That simply is not the law, nor should it be. Indeed, as Google is well situated to explain, adoption of any such *per se* rule would wreak havoc upon companies within the information technology sector, whose ability to offer innovative and useful services to the public depends on the adaptability of the fair use doctrine.

Counsel for Defendants-Appellees Center for Intercultural Organizing and Kayse Jama have consented to the filing of this brief. Counsel for Plaintiff-Appellant Righthaven LLC has provided neither objection nor permission in response to Google's request for consent to file, thereby necessitating this motion for leave.

Dated: January 13, 2012

Respectfully submitted,

Of Counsel:

/s/ Andrew P. Bridges
Andrew P. Bridges

Fred von Lohmann
Oliver Metzger
GOOGLE INC.
1600 Amphitheatre Parkway
Mountain View, CA 94043
650.253.0000

FENWICK & WEST LLP
Attorneys for Amicus Curiae Google Inc.